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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/378,196	08/19/1999	SHMUEL SHAFFER	99P7442US01	8833

7590 02/03/2003

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EXAMINER
NGUYEN, BRIAN D

ART UNIT	PAPER NUMBER
2661	

DATE MAILED: 02/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/378,196	SHAFFER ET AL.
	Examiner	Art Unit
	Brian D Nguyen	2661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *the application filed 8/19/99* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *19 August 1999* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *2-4* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities:

On page 4, lines 12-13, the term "the gatekeeper 109" is a typographical error, it should be changed to ---the gatekeeper 108---.

On page 4, lines 31-32, the term "RAS protocol functionality 32" is a typographical error, it should be changed to --- RAS protocol functionality 17---.

On page 5, lines 1 and 3, the term "video codec 22" is a typographical error, it should be changed to --- video codec 15---.

On page 6, lines 10, the term "network interface 50" is a typographical error, it should be changed to --- network interface 13---.

On page 13, line 31, the term "bandwidth monitor 308" is a typographical error, it should be changed to --- bandwidth monitor 306---.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: "516" of Figure 5. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claims 2-4, 6-7, and 9-13 are objected to under 37 CFR 1.75 because of the following informalities:

Claims 2-4, it is suggested to change "A telecommunications system in accordance with claim 1" in line 1 to ---The telecommunications system in accordance with claim 1---.

Claim 3, line 1, "teleccmmunications" is a typographical error; it should be changed to ---telecommunications---. In line 3, it is suggested to change "a QoS level" to ---a quality of service (QoS) level---.

Claims 6-7, it is suggested to change "A method according to claim 5" in line 1 to ---The method according to claim 5---.

Claims 9-13, it is suggested to change "A telecommunications device" in line 1 to ---The telecommunications device---.

Claims 11 and 12, "network usage" in line 2 seems to refer back to "network usage" recited in line 2 of claim 10; if this is true, it is suggested to change "network usage" in line 2 of claims 11 and 12 to ---said network usage---.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 7-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the limitation "said network" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "said communication" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 8 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Riddle (6,175,856).

Regarding claim 8, Riddle discloses telecommunications device comprising: means for establishing a connection with another telecommunications device using a first coding algorithm (see Figure 6 and col. 6, lines 20-21) and means for changing the communication from the first coding algorithm to a second coding algorithm (see col. 1, lines 48-55 and col. 13, lines 63-65).

Regarding claim 9, Riddle further discloses means for directing the another telecommunications device to renegotiate coding algorithm from the first to the second coding Algorithm (see col. 1, lines 52-55; col. 9, lines 6-9; col. 10, lines 57-58; and col. 11, lines 11-12).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roy (6,081,513) in view of Riddle (6,175,856).

Regarding claim 1, Roy discloses a telecommunications system comprising a packet switched network; one or more telephony devices coupled to the packet switched network (see Figure 1); a bandwidth allocation server (see col. 3, lines 45-58 and col. 5, lines 23-26) configured to cause a renegotiation of bandwidth requirement between the telephony devices (see col. 2, lines 42-45; col. 7, lines 11-19; col. 13, lines 56-61; and col. 19, lines 19-21). Roy does not specifically disclose the one or more telephony devices communicate using one or more coding algorithms and the renegotiation is of which of the coding algorithms the one or more telephony devices communicates while the one or more telephony devices are communicating using a predetermined coding algorithm. However, Riddle from the same or similar field of Roy discloses a telecommunications system in which one or more telephony devices (see Figure 1)

communicates using one or more coding algorithms and renegotiating of which of the coding algorithms the one or more telephony devices communicates while the one or more telephony devices are communicating using a predetermined coding algorithm (see col. 1, lines 48-63; col. 9, lines 6-9; col. 10, lines 57-58; and col. 11, lines 11-12). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use one or more coding algorithms and renegotiating the coding algorithms as network condition changes as taught by Riddle in the system of Roy so that different telephony devices of different types can communicate with each others.

Regarding claim 2, Roy further discloses the packet switched network is a H.323 network (see col. 2, lines 42-45).

Regarding claim 3, Roy further discloses the bandwidth allocation server configured to initiate the renegotiation if one or more existing connections have a QoS level which may be altered (see col. 5, lines 24-27; col. 9, lines 3-7; and col. 19, lines 4-5).

Regarding claim 4, Roy further discloses the bandwidth allocation server configured to initiate the renegotiation if a level of data traffic exceeds a predetermined threshold (see 269 of Figure 14 and col. 13, lines 62-65).

Regarding claims 5 and 6, Roy discloses a method for operating a telecommunication system comprising monitoring network usage and changing bandwidth allocated to one or more ongoing connections based on the monitoring network usage as in claim 5 (see col. 3, lines 23-26 and col. 14, lines 48-50) and determining whether an existing connection has a lower quality of service than another connection and changing bandwidth allocated to the existing connection responsive to the determining as in claim 6 (see abstract; col. 6, lines 60-62; and col. 15, lines

46-48). Roy does not specifically disclose changing codec speed for the existing connection. However, Riddle from the same or similar field of Roy discloses a method for operating a telecommunications system in which codec speed for an existing connection could be changed (see col. 1, lines 52-55 and col. 10, line 57-col. 11, line 12). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to change codec speed for one or more ongoing connections as taught by Riddle in the system of Roy in order to effectively and fairly use of the system bandwidth between the connections.

Regarding claim 7, Roy further discloses determining whether data traffic on the network has exceeded a predetermined threshold (see col. 3, lines 23-26 and col. 13, lines 62-65).

10. Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riddle (6,175,856) in view of Roy (6,081,513).

Regarding claims 10 and 11, Riddle discloses all the claimed subject matter as described in paragraph 7 above, except means for monitoring network usage for levels of data traffic. However, Roy from the same or similar field of Riddle teaches a telecommunications device including means for monitoring network usage for levels of data traffic (see col. 3, lines 23-26 and col. 7, lines 36-41). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to monitor network usage for levels of data traffic as taught by Roy in the system of Riddle so that bandwidth allocated to the connections can be dynamically adjusted based on level of data traffic in order to effectively use of the system bandwidth.

Regarding claims 12 and 13, Riddle discloses all the claimed subject matter including changing from the first coding algorithm to the second coding algorithm as described in previous

paragraphs, except for monitoring network usage for actual and requested quality of service (QoS) levels and determining if the connection has a lower QoS than another connection so that the codec algorithms can be changed based on the determining. However, Roy from the same or similar field of Riddle discloses monitoring network usage for actual and requested quality of service (QoS) levels as in claim 12 (see abstract; col. 3, lines 23-26; col. 7, lines 25-41) and determining if the connection has a lower QoS than another connection as in claim 13 (see col. 9, lines 3-7 and col. 14, lines 40-50). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to monitor network usage as taught by Roy in the system of Riddle so that a higher priority will be guaranteed and have a better service than a lower priority.

Double Patenting

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 5, 7, 8, 10, and 11 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 15 and 19 of copending Application No. 09/236,671. Although the conflicting claims are not identical, they are not

patentably distinct from each other because the limitations: "monitoring network usage" as described in claims 5, 10 and 11 is corresponding to "a bandwidth monitor configured to monitor network bandwidth usage" as described in claim 15 of copending Application No. 09/236,671; "changing codec speed for one or more ongoing connections based on the monitoring network usage" as described in claim 5 is corresponding to "select which of said coding algorithms said one or more telephony devices communicates with based on network bandwidth usage" and "adjust said coding algorithm" as described in claims 15 and 19, respectively, of copending Application No. 09/236,671; "determining whether data traffic on said network has exceeded a predetermined threshold" as described in claim 7 is corresponding to "if system bandwidth exceeds a predetermined threshold as described in claim 19 of copending Application No. 09/236,671; "means for establishing a connection with another telecommunications device using a first coding algorithm" as described in claim 8 is corresponding to "a network interface for interfacing said bandwidth allocation server to a packet switched network" and "said one or more telephony devices configured to communicate using one or more coding algorithms" as described in claim 15 of copending Application No. 09/236,671; and "means for changing said communication from said first coding algorithm to a second coding algorithm" as described in claim 8 is corresponding to "adjusting said coding algorithms" as described in claim 19 of copending Application No. 09/236,671.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hou et al (6,324,184); Strathmeyer (6,201,805); Gardner et al (5,857,147); Voois et al (6,404,776) ; and Otis (6,085,241) are all cited to show a telecommunication system that configured to allocate the bandwidth to telephony devices or monitoring network usage which are considered pertinent to the claimed invention..

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian D Nguyen whose telephone number is (703) 305-5133. The examiner can normally be reached on 7:30-6:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doug Olms can be reached on (703) 305-4703. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9314 for regular communications and (703) 872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-0377.

BN
January 30, 2003

Brian Nguyen